(3)

Supreme Court, U.S.
FILED
SEP 19 1995
CLERK

No. 95-215

IN THE

Supreme Court of the United States

SARAH K. HUGHES,

Petitioner,

v.

MORRIS BEDSOLE, both individually and in his official capacity as Sheriff of Cumberland County, North Carolina; JAMES D. BOWSER, both individually and in his official capacity as Major of the Cumberland County Sheriff's Department; CUMBERLAND COUNTY SHERIFF'S DEPARTMENT, CUMBERLAND COUNTY, NORTH CAROLINA, and the WESTERN SURETY COMPANY, INCORPORATED,

Respondents.

PETITIONER'S REPLY BRIEF IN RESPONSE TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Robert J. Willis
5 W. Hargett Street Suite 404
Raleigh, NC 27601
(919) 821-9031
Counsel for Petitioner and of Record

Appellate Printing Services • 523 East Main Street • Richmond, VA 23219 • (800) 642-7789

7pp

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES i

STATEMENT OF THE CASE 2

A. FACTS 2

REASONS FOR GRANTING THE WRIT 3

CONCLUSION 5

TABLE OF AUTHORITIES

CASES PAGE

Texas Department of Community Affairs v. Burdine,

450 U.S.248 (1981) 4

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Amendment I 5

U.S. Constitution, Amendment XIV, Section 1 5

STATUTES

42 U.S.C. §1983 5

42 U.S.C. §2000e-2(a)(1) 5

42 U.S.C. §2000e-3(a) 5

No. 95-215

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

SARAH K. HUGHES,

Petitioner,

v.

MORRIS BEDSOLE, both individually and in his official capacity as Sheriff of Cumberland County, North Carolina; JAMES D. BOWSER, both individually and in his official capacity as Major of the Cumberland County Sheriff's Department; CUMBERLAND COUNTY SHERIFF'S DEPARTMENT, CUMBERLAND COUNTY, NORTH CAROLINA, and the WESTERN SURETY COMPANY, INCORPORATED,

Respondent.

PETITIONER'S REPLY BRIEF IN RESPONSE TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Pursuant to ¶6 of Rule 15 of the Supreme Court, petitioner Sandra K. Hughes files this reply brief to address certain new points raised in the Respondents' Brief In Opposition.

STATEMENT OF THE CASE

A. FACTS

The petitioner stands on the statement of facts set forth in her opening brief and petition for certiorari filed in this case at pages 8-11 of that brief. The petitioner adds that the "facts" recited at pages 9-11 of the Respondents' Brief In Opposition are simply not supported by any admissible evidence presented and received by the district court and the Fourth Circuit. Appendix to Petitioner's Petition for Writ of Certiorari (hereinafter cited as "App."), p. 15A (Fourth Circuit states: "Although CCSD records and Bedsole's later statement to an EEOC investigator do not explain why the male sergeant was not disciplined for the July incidents. . . "). Contrary to respondents' assertion at page 11 of the Respondents' Brief, the Fourth Circuit specifically declined to consider the unsworn statement of Sheriff Bedsole cited at page 10 of the respondents' brief in opposition and other evidence which the respondents submitted in opposition to the plaintiff's motion under Rule 59(e), Fed.R.Civ.P., based upon the petitioner's "timely objection to its introduction." App. at 14A, fn.7. Similarly, none of the various "problems" listed at page 9 of the respondents' Brief in opposition other than the "serious security violations" were ever presented in the form of admissible evidence as the "several reasons why the petitioner was discharged." Respondents' Brief in Opposition, p. 9, App., p. 15A. In fact, evidence in the form of a letter dated April 24, 1989 from the Sheriff's Legal Advisor to the EEOC and the testimony of respondent James Bowser at the petitioner's unemployment compensation hearing on May 30, 1989 was presented which tended to show that the only reason offered by the respondents at or close to the petitioner's discharge as the reason for her discharge was "because of doors within the jail being found unlocked on two occasions" on the shift supervised by the petitioner.

Lastly, the petitioner did not fail to address both the first and third reasons for granting the writ that are presented in Sections I and III of the Petition for Certiorari filed in this case. The respondents' argument at pages 15 and 21 of the Respondents' Brief notwithstanding, the petitioner raised the first reason for granting the writ at page 40 of the Appellant's Opening Brief filed with the Fourth Circuit, and at pages 1-2 and 10-11 of the Appellant's Reply Brief filed with the Fourth Circuit. As for the petitioner's third reason for granting the writ, the petitioner raised that third reason with the Fourth Circuit at pages 38-40 of the Appellant's Opening Brief filed with the Fourth Circuit, at pages 12-13 of the Appellant's Reply Brief filed with the Fourth Circuit, and in ¶2 at pages 4-5 of the Appellant's Petition for Rehearing and Suggestion for Rehearing In Banc filed with the Fourth Circuit.

REASONS FOR GRANTING THE WRIT

The petitioner adopts and incorporates by reference the argument and authority cited in at pages 14-22 of her Petition for Writ of Certiorari filed in this action. The Respondent's Brief In Opposition appears to rely on the same "evidence" that the Fourth Circuit expressly noted was not in the record in admissible form as support for the respondents' contention that all of the reasons advanced by the petitioner for the granting of the writ are inadequate. See Respondent's Brief In Opposition, pp. 16 ("testimony of Sgt. Park about Hughes turning sour against department", etc.), and 23-24. For example, the respondents urge that this Court should not disturb the Fourth Circuit's reliance on the petitioner's "knowledge" that a door was unlocked to distinguish petitioner from Sgt. Park when the record noted by the Fourth Circuit itself contains no evidence as to whether or not Sgt. Park did "accept blame or fault" for two unlocked door incidents in July, 1989,

and whether or not Sheriff Bedsole actually relied upon that distinction. Compare Respondents' Brief, p. 23, with App. p. 15A. The petitioner submits that this argument is in direct conflict with the holding of this Court in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 255 (1981), with respect to the Court's requirement that the defendant has the burden to articulate the "reasons for the plaintiff's rejection" "through the introduction of admissible evidence", and may not satisfy that burden through the argument of counsel or some other form of inadmissible evidence. *Id.*

CONCLUSION

For the reasons set forth in her Petition for Writ of Certiorari and as set forth above, this case presents the Court with an opportunity for resolving important statutory and constitutional issues relating to the type, order, and nature of the proof that is required to rebut a prima facie claim of employment discrimination claim under 42 U.S.C. §§2000e-2(a)(1), 2000e-3(a), 42 U.S.C. §1983, and the First and Fourteenth Amendments, and their relationship to the type, order, and nature of the proof required to demonstrate and rebut a prima facie claim of free speech, public employee employment retaliation. This case also presents the Court with an opportunity to determine whether a female employee of a local governmental employer has a cause of action under 42 U.S.C. §1983 and the Fourteenth Amendment for sex discrimination in that employment that is independent of any cause of action that she may have under Title VII of the Civil Rights Act of 1964.

Robert J. Willis
Attorney at Law
NC Bar #10730
(mailing address)
P.O. Box 1269
Raleigh, NC 27602
(919) 821-9031

5. W. Hargett Street
Suite 404
Raleigh, NC 27601
Counsel for Petitioner